Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 95-116
Telephone Number Portability	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION IN OPPOSITION TO PETITION FOR FORBEARANCE OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

MCI Telecommunications Corporation (MCI), by counsel, hereby files this opposition to the Petition For Forbearance of the Cellular Telecommunications Industry Association (CTIA Petition), filed on December 16, 1997.[1]

In its Petition, the Cellular Telecommunications Industry Association (CTIA) requests that the Federal Communications Commission (Commission) forbear from enforcing the June 30, 1999, implementation deadline for commercial mobile radio service (CMRS) providers to deploy local number portability. This is the second effort by CTIA, in as many months, to extend or eliminate altogether number portability deployment requirements for wireless carriers.[2]

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[1] *Public Notice*, Wireless Telecommunications Bureau Seeks Comment on CTIA Petition Requesting Forbearance From CMRS Number Portability Requirements (rel. Jan. 22, 1998).

[2] In November 1997, CTIA filed a Petition For Waiver to Extend the Implementation Deadlines of Wireless Number Portability. MCI filed comments opposing CTIA's waiver petition, and noting that CTIA had not detailed any efforts to comply with the Commission's number portability Order. In the instant Petition, CIA states only that "PCS providers have devoted almost the entirety of their resources to aggressive construction of their networks." CTIA Petition, p. 4. Clearly, rather than expending resources to comply with orders to provide number portability, CTIA's members have directed considerable resources toward other network priorities and the filing of requests for excuse from number portability requirements. The rest of the industry must now pay for CTIA's members' lack of diligence, and CTIA's repeated filings are diverting finite industry resources from implementing number portability. CTIA's tactics also further underscore the need for CTIA, on behalf of the wireless industry, to file monthly reports detailing progress made toward wireless number portability deployment.

In this, its latest attempt, CTIA requests that the Commission refrain entirely from number portability enforcement until completion of the five-year build-out period for broadband personal communications services (PCS) has expired. CTIA's new Petition is even more objectionable, both legally and for policy reasons, than its previous one. CTIA's Petition should be denied because: (1) CTIA seeks reconsideration of a long-standing and well-reasoned Commission Order on wireless number portability, and the time for reconsideration is long past; (2) CTIA has not met the statutory legal test that would entitle it to forbearance; and (3) CTIA's argument that forbearance is necessary in order for it to concentrate its limited resources in other areas is not sufficient to justify forbearance from number portability requirements.

I. CTIA's PETITION IS A LATE-FILED PETITION FOR RECONSIDERATION WHICH SHOULD NOT BE CONSIDERED BY THE COMMISSION.

CTIA's Petition does not challenge the Commission's authority under the Telecommunications Act of 1996 (Telecommunications Act)[3] to require wireless carriers to deploy number portability.[4] Rather, CTIA's Petition essentially requests that the Commission reconsider its decision to exercise this authority, asserting that "the factual circumstances which would arguably justify number portability have been altered by the realities of the competitive CMRS market."[5] These "realities," however, are really nothing more than what CTIA now calls

[3]Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151, *et seq.* For ease of reference, citations to the Telecommunications Act will be as codified in the United States Code.

[4]The Commission's authority arises under sections 1, 2, 4(i) and 332 of the Act. *In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking (First Report and Order), ¶ 153 (rel. July 2, 1996).

[5]CTIA Petition, p. i.

"the demands of a competitive market."[6] But the same conditions existed when the Commission decided that wireless carriers should provide number portability, and the Commission expressly rejected the argument made by CMRS providers that the existence of competition significantly diminished the benefits of CMRS number portability.[7]

The Commission long ago determined that the provision of number portability by CMRS furthers the public interest.[8] Moreover, the Commission's First Report and Order specifically addressed the argument, raised once again by CTIA, that competition among CMRS providers eliminates the need for them to provide number portability:

> We find unpersuasive arguments that number portability is unimportant because the CMRS market is already substantially competitive since CMRS customers already may choose from multiple competitive carriers.[9]

In addition to asserting that the existence of a competitive wireless market eliminates the need for wireless carriers to deploy number portability, CTIA also argues that number portability imposes disproportionate costs on wireless carriers, while resulting in little benefit. Yet the

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[6] *Id.*, p. ii. CTIA's assertions that consumer prices for wireless services have dropped dramatically, thus proving "the demands of a competitive market," are speculative at best. For example, CTIA's argument that one carrier's price of $75.00 for 1,500 minutes per month (*see* CTIA Petition, p. 5 n. 9) proves significant competition is undercut by the fact the carrier that implemented that plan withdrew it from the market last year, and has increased its prices since that time.

[7] *See* First Report and Order, ¶ 146.

[8] First Report and Order, ¶ 153 ("the public interest is served by requiring the provision of number portability by CMRS providers because number portability will promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services.")

[9] First Report and Order, ¶ 158.

Commission considered those costs in its First Report and Order extending number portability obligations to wireless carriers, and expressly accounted for them in setting a longer CMRS implementation schedule.[10]

Though styled as a petition for "forbearance," CTIA's Petition is, in reality, a request that the Commission reconsider the same arguments that were raised in this docket over a year and a half ago. The Commission should not allow CTIA a second bite at the apple.

It is well-settled that if a party wishes to seek reconsideration of a final Commission action, it must file a petition for reconsideration "within 30 days from the date of the public notice of such action."[11] Pleadings filed after expiration of the thirty day period will not be considered "except upon leave granted pursuant to a separate pleading . . .."[12] CTIA's Petition does nothing more than request that the Commission revisit the question whether the existence of competition supports a determination that number portability is not needed in a particular market. It should thus be deemed a petition for reconsideration, which is not timely filed, and should not be considered by the Commission.

The Commission considered over a year ago all of the arguments raised in CTIA's Petition. It should not now expend its valuable resources revisiting the same issues again. CTIA's Petition should be denied.

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[10] *See* First Report and Order, ¶ 166 (recognizing that additional time is needed for wireless carriers to deploy number portability, due to the existence of certain factors unique to the cellular industry.)

[11] 47 C.F.R. § 1.429(d).

[12] *Id.*

II. CTIA IS NOT LEGALLY ENTITLED TO FORBEARANCE UNDER SECTION 10 OF THE TELECOMMUNICATIONS ACT.

CTIA claims entitlement to forbearance from number portability requirements under section 10 of the Telecommunications Act.[13] Since it has not met the requirements set forth in section 10, however, its request should be denied.

Section 10 of the Telecommunications Act provides that:

> [T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that --
>
> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.

47 U.S.C. § 160(a). The Telecommunications Act further provides that in determining whether forbearance is in the public interest, the Commission must also consider whether forbearance will promote competitive market conditions and competition among service providers.[14]

With respect to the first part of the three-prong section 10 test, CTIA claims that since the CMRS market is competitive, and no one carrier exercises substantial monopoly power within

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[13] *See* CTIA Petition, pp. 7-9.

[14] 47 U.S.C. § 160(b).

that market, CMRS carriers are "necessarily barred from engaging in unjust or unreasonable pricing or from 'harming' consumers as a matter of course."[15] This argument misses the mark.

Absent the legal requirement that they do so, CMRS providers would not provide number portability on their own, and if they did, it could not be safely presumed that they would do so in a just and reasonable fashion. CTIA's Petition states that CMRS providers may not charge unjust or unreasonable prices. But section 160(a)(1) requires that, in addition to pricing, the Commission must consider whether the regulation at issue is necessary to ensure that carriers' "practices, classifications, or regulations" are just and reasonable. None of those three items is raised in CTIA's Petition. If CMRS providers do not deploy number portability, wireless customers will be harmed by being unable, without changing phone numbers, to freely change wireless service providers. Further, if wireline carriers are required to deploy number portability, while CMRS carriers need not do so, CMRS carriers will have an unfair advantage over wireline carriers when it comes to attracting and retaining customers. Under these circumstances, CTIA has failed to demonstrate that, absent regulatory oversight, CMRS carriers would not engage in unjust or unreasonably discriminatory practices.

The second prong of the test allows the Commission to forbear from regulation when enforcement is not necessary for the protection of consumers.[16] Clearly, if the Commission grants CTIA's Petition, consumers will be deprived of the ability to change service providers without changing their telephone numbers. This is counter to the goal of the

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[15]CTIA Petition, pp. 7-8.

[16]47 U.S.C. § 160(a)(2).

Telecommunications Act to make advanced telecommunications services available to all Americans by opening "all telecommunications markets to competition."[17] Moreover, the question whether requiring CMRS carriers to provide number portability "protects consumers" has already been answered by the Commission in the affirmative.[18] As stated earlier, the time to have sought reconsideration of that final Commission action was on reconsideration or appeal of the order. There is no reason for the Commission to reverse its determination that number portability protects the interests of consumers.

The third and final prong of the test requires the Commission to consider whether CTIA has demonstrated whether forbearance is consistent with the public interest.[19] In support of its position that it has met this prong, CTIA states that number portability is "not necessary to promote the public interest."[20] Specifically, CTIA asserts that:

> [f]ocusing resources on those elements which have already been proven to influence competition is in the public interest. Diverting resources away from them because of an ***anticipated pro-market effect*** by the Commission, does not benefit consumers.[21]

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[17]*See* Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996). *See also* House of Rep. Comm. On Commerce Report on H.R. 1555 at 72 (July 24, 1995) ("the ability to change service providers is only meaningful if a customer can retain his or her local telephone number.")

[18]First Report and Order, ¶¶ 159, 161 (number portability provides incentives for carriers to "lower prices and increase service choice and quality" and "enhanc[es] flexibility for users of telecommunications services.")

[19]47 U.S.C. § 160(a)(3).

[20]CTIA Petition, p. 9.

[21]*Id.* Emphasis added. CTIA also argues that L.P. is a "speculative regulatory objective[]". CTIA Petition, p. 9 n.16. It is difficult indeed to fathom how

This argument is without merit. The Commission has correctly determined, after careful consideration of arguments put forth by dozens of interested parties on all side of the issue, that number portability has positive and pro-competitive effects on the development of local competition, and is thus in the public interest. CTIA has not raised a single argument that necessitates reconsideration of that determination.

The objective of forbearance is to eliminate regulation where competitive market forces can substitute for regulatory requirements. Yet, as the experience with local competition shows, incumbent carriers cannot be expected to provide number portability without a regulatory requirement that they do so. Therefore, in this instance, competition is no substitute for regulation, making forbearance from number portability for CMRS carriers decidedly contrary to the public interest. This specific finding was clearly made in the Commission's First Report and Order, which states:

> We believe that imposing number portability obligations on CMRS providers will foster increased competition in the CMRS marketplace, and furthers our CMRS regulatory policy of establishing moderate, symmetrical regulation of all services, and a preference for curing market imperfections by lowering barriers to entry to encourage competition.[22]

The issues raised in CTIA's Petition have long been answered by the Commission. Even had they not been, CTIA clearly has not met the standard for forbearance required under section 10 of the Telecommunications Act, and its petition should be denied.

[22] First Report and Order, ¶ 154.

III. CTIA's RESOURCE ALLOCATION ARGUMENTS ARE INSUFFICIENT TO SUPPORT FORBEARANCE FROM ENFORCING NUMBER PORTABILITY REQUIREMENTS.

CTIA asserts that "the public interest is better served by the concentration of limited resources to crucial infrastructure buildout as rapidly as possible."[23] Stated another way, according to CTIA, completion of its buildout goals is more important than the Telecommunications Act's pro-competitive goal of ensuring that consumers have a meaningful choice between local exchange service providers.

As it did in its earlier waiver petition, CTIA's claim is that the public interest would be best served if its members were allowed to tend to their network construction and other business needs and priorities before complying with the Telecommunications Act's number portability requirements. If CTIA's position is endorsed by the Commission, meaningful local competition will never materialize. In point of fact, all carriers could find more appealing ways to invest their limited resources, each of which would support their individual companies' specialized interests in one way or another. The precise reason why number portability requirements are necessary, however, is to avoid this outcome, because number portability is so critical to the development of

[23]CTIA Petition, p. 9. CTIA's reference to the "limited resources" of its members is questionable. With limited resources, for example, Southwestern Bell added over one million new wireless subscribers in the past year, an increase of 24% from 1996. *See* SBC Delivers Strong 1997 Performance; Growth In Core Businesses, Merger Success Highlight Year, January 28, 1998, attached as Exhibit A.

local competition.[24] The Commission should not endorse CTIA's position, but should promptly deny its petition.

WHEREFORE, for the foregoing reasons, MCI respectfully requests that the Commission deny CTIA's Petition For Forbearance.

Respectfully submitted,

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[24]The importance of number portability to the development of local competition cannot be overstated. In addition to the Commission's many references to the critical nature of number portability, compliance with number portability deployment requirements is a competitive checklist item contained in section 271(c)(2)(B)(xi). At least one Regional Bell Operating Company, BellSouth, has argued that its agreements with various PCS providers qualify it to receive authority to provide interLATA service under section 271. *See* BellSouth Louisiana Application, pp. 8-9. While the Commission has not decided whether PCS carriers are competing providers of telephone exchange service within the meaning of section 271, it noted that PCS providers are still transitioning from a "complementary telecommunications service" to a "competitive equivalent to wireline services." *In the Matter of Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Louisiana*, Memorandum Opinion And Order (rel. Feb. 4, 1998), ¶ 73. BellSouth and other incumbents cannot, on the one hand, argue that PCS actually competes with wireline service, and on the other, that PCS providers should not be required to provide number portability. If PCS providers do not provide number portability, they should not be considered "competitors" to wireline services providers.

EXHIBIT A

Investor Information

Quarterly Earnings

Annual Report

Stock Performance

Shareowner Services

SBC Delivers Strong 1997 Performance; Growth In Core Businesses, Merger Success Highlight Year

Fourth Quarter EPS Grows 22 Percent Before Special Charges

San Antonio, Texas, January 28, 1998

SBC Communications Inc. (NYSE: SBC) today announced strong performance in 1997, with solid growth in its core businesses and momentum from a successful merger with Pacific Telesis. SBC's 1997 results were led by strong increases in customer lines, as SBC subsidiaries added nearly 1.6 million telephone access lines and more than 1 million new wireless customers during the year.

"We had a terrific 1997 as we achieved strong growth in our core businesses, quickly completed our merger with Pacific Telesis and continued to move aggressively to enter the long distance business," said Edward E. Whitacre Jr., chairman and chief executive officer. "Our financial performance was driven by solid growth in our wireline and wireless businesses, including our PCS launch in California and Nevada which attracted nearly 340,000 subscribers and exceeded our own expectations.

"We're on target to reach our goal of $1 billion in increased net income by 2000 that was identified by our merger teams, and we've invested in key markets and businesses that position the company well for continued growth in the dynamic telecommunications marketplace," he said. "Our goal remains to consistently deliver shareowner value. As the industry continues to consolidate, we believe we're in the right markets with the right products and have the management team to be among the top global telecommunications players in the years to come."

Earnings for the year, after adjustments for special charges including costs related to local number portability and strategic decisions resulting from a comprehensive operational review of the merged company, and gains related to the sale of Bellcore and first quarter pension settlements, were $3,364 million, or a basic earnings per share of $3.68, compared with an adjusted $3,215 million, or a basic earnings per share of $3.49, a year ago.

Earnings for the quarter, after adjustments for special charges including those related to costs for local number portability and strategic decisions resulting from a comprehensive operational review of the merged company, and gains related to the sale of Bellcore, were $915 million, or a basic earnings per share of $1.00, compared with an adjusted $747 million, or a basic earnings per share of $0.82, a year ago. Earnings were affected by increased expenses associated with providing PCS services in California and Nevada.

SBC's fourth quarter 1997 results included special charges to net income of $327 million related to merger and local number portability costs and gains related to the sale of Bellcore. Including these charges, SBC reported fourth quarter earnings of $588 million, or $0.64 per share.

Highlights of the year and fourth quarter included:

- Adjusted full-year earnings of $3.4 billion, up 4.6 percent from 1996 earnings of $3.2 billion. On a basic per share basis, 1997 earnings increased 5.4 percent to $3.68, compared with $3.49 in 1996. Earnings for the fourth quarter of 1997 were $915 million, and basic earnings per share increased 22 percent to $1.00, from $0.82 in the prior year.

- Adjusted full-year revenues rose to $25.0 billion, up 6.8 percent from $23.4 billion in 1996. Fourth-quarter revenues increased 6.9 percent to $6.6 billion, from $6.2 billion a year ago.

- Fourth-quarter access line growth on a restated basis in Southwestern Bell's markets was 5.3 percent, with a strong 8.3 percent increase in business lines. Pacific Bell achieved a 4.7 percent growth in total lines on a restated basis, with a strong 12.2 percent increase in additional lines.

- SBC added more than 1 million new wireless subscribers in 1997, raising total wireless customers to 5.5 million, an increase of 24 percent over last year. Penetration in SBC's network-based non-PCS markets increased to 12.2 percent, one of the highest in the industry.

- At Pacific Bell, the number of Basic ISDN interfaces grew 42.9 percent over last year and the number of DS-1 lines grew by 40.4 percent. Southwestern Bell's ISDN service, DigiLine, grew 90.2 percent, while frame relay service expanded 103.9 percent over last year.

Telephone Company Operations

Whitacre noted that both Southwestern Bell and Pacific Bell turned in solid results, with building momentum in sales of vertical services. "We continue to see strong demand for our products and services as the markets in which we operate continue to grow."

Southwestern Bell added 185,000 access lines in the fourth quarter and 798,000 access lines in the past year, ending 1997 with a total of 15.7 million access lines. Southwestern Bell extended its record of success in marketing vertical services, as its industry-leading Caller ID penetration reached 47 percent. Penetration of this product is targeted to exceed 50 percent by mid-1998.

Pacific Bell added 199,000 lines during the quarter and 784,000 lines over the past year, ending the year with a total of 17.4 million access lines. Pacific Bell increased its fourth quarter vertical services revenue growth by 17.7 percent over the prior year and increased its penetration of Caller ID to 6.4 percent from about 1.5 percent the prior year.

"We've taken some important steps in applying the marketing techniques that were successful at Southwestern Bell in the California market. We're encouraged by the results we've achieved so far and are confident we can build on this early momentum," Whitacre said.

Wireless Growth

SBC added over one million new wireless subscribers for the year, increasing the subscriber base by 24 percent over the prior year. SBC's PCS offering in California and Nevada ended the year with nearly 340,000 subscribers, exceeding the company's original goal of 250,000 subscribers, Whitacre said.

In traditional Southwestern Bell and Cellular One markets, the company added 670,000 subscribers during 1997, bringing the total number of wireless customers in those markets to nearly 5.2 million subscribers at the end of the year.

Local Competition/Long Distance

SBC continued to open its markets to competition in 1997. SBC had more than 270 interconnection agreements signed throughout its seven-state territory and had devoted more than 3,000 employees to opening up its markets to local competition, as required by the Telecommunications Act of 1996.

On Dec. 31, SBC received a ruling allowing it to enter into long distance, and in early January, the company filed a tariff in Oklahoma to offer service there. "After we meet any legal and regulatory concerns, we could be offering service in our other six states by the end of the year," Whitacre said.

Merger Integration

In April, SBC completed its merger with Pacific Telesis. "We have our management team in place, we've moved quickly to consolidate operations, so some of the toughest work is behind us. Our execution continues on track, and we're already ahead of our own internal schedule," Whitacre said.

In January, SBC announced an agreement to merge with Southern New England Telecommunications (SNET), which reflects the company's confidence in the growth prospects of its wireline and wireless businesses. "This transaction is based on the same approach as the Pacific Telesis merger to seize the tremendous potential inherent in wireline and wireless businesses, make the most of synergies and grow revenues through industry-leading marketing," he said. "SNET has long distance experience that we can benefit from, has strong core businesses and is a terrific complement to our wireless operations in the northeast."

International Operations

SBC's international investments involve every aspect of the telecommunications industry, including local service, domestic and international long distance, wireless, video and directory publishing. "We'll continue to develop the excellent international opportunities we've created for ourselves," Whitacre said.

In 1997 SBC expanded its presence in Europe, notably in France and Switzerland. SBC acquired a stake in Telkom South Africa in March 1997 and that investment has already had a positive impact on earnings.

SBC Communications Inc. is a global leader in the telecommunications industry, with more than 33 million access lines and over 5 million wireless customers across the United States, as well as investments in telecommunications businesses in 10 countries. Under the Southwestern Bell, Pacific Bell, Nevada Bell and Cellular One brands, SBC, through its subsidiaries, offers a wide range of innovative services, including local and long-distance telephone service, wireless communications, paging, Internet access, and messaging, as well as telecommunications equipment, and directory advertising and publishing. SBC (www.sbc.com) has more than 116,000 employees and reported 1997 revenues of $25 billion. SBC's equity market value of $67.3 billion (as of December 31, 1997) ranks it as one of the largest telecommunications companies in the world.

SBC Communications Inc.
Pro-Forma Financial Summary and Comparisons
(dollars in millions, except per share amounts)
(unaudited)

-- FOURTH QUARTER RESULTS --

	1997	1996	CHANGE
Before Special Charges			
Operating revenues	$6,633	$6,202	6.9%
Operating expenses	$4,999	$4,801	4.1%
Net income	$ 915	$ 747	22.5%
Basic earnings per share	$1.00	$0.82	22.0%
Earnings per share-assuming dilution	$0.99	$0.81	22.2%
SPECIAL CHARGES (net of tax)	($327)	($26)	--
As Reported			
Operating revenues	$6,633	$6,202	6.9%
Operating expenses	$5,588	$4,845	15.3%
Net income	$588	$721	-18.4%
Basic earnings per share	$0.64	$0.79	-19.0%
Earnings per share-assuming dilution	$0.63	$0.78	-19.2%
Weighted average common shares outstanding (in millions)	$917	$915	

SBC Communications Inc.
Pro-Forma Financial Summary and Comparisons
(dollars in millions, except per share amounts)
(unaudited)

-- ANNUAL RESULTS --

	1997	1996	CHANGE
Before Special Charges			
Operating Revenue	$25,044	$23,445	6.8%
Operating Expense	$18,948	$17,565	7.9%
Earnings before special charges and cumulative effect of accounting change	$3,364	$3,215	4.6%
Basic earnings per share	$3.68	$3.49	5.4%
Earnings per share-assuming dilution	$3.65	$3.48	4.9%
SPECIAL CHARGES (net of tax)	($1,890)	($26)	--
As Reported			
Operating Revenue	$24,856	$23,445	6.0%
Operating Expense	$21,686	$17,609	23.2%
Earnings before cumulative effect of accounting change	$1,474	$3,189	-53.8%
Basic earnings per share	$1.61	$3.46	-53.5%
Earnings per share-assuming dilution	$1.60	$3.45	-53.6%
Cumulative effect of change in accounting for directory operations, net of tax	--	$90	--
Net income	$1,474	$3,279	-55.0%
Basic earnings per share	$1.61	$3.56	-54.8%
Earnings per share-assuming dilution	$1.60	$3.54	-54.8%
Weighted average common shares outstanding (in millions)	$914	$921	

Additional Financial Statements *(PDF Format)*

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CERTIFICATE OF SERVICE

I, John E. Ferguson III, do hereby certify that copies of the foregoing Comments of MCI on the Petition For Forbearance of The Cellular Telecommunications Industry Association were sent, on this 23rd day of February, 1998, via first-class mail, postage pre-paid, to the following:

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